

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 18-23, 26 and 28-32 are pending in the application, with claims 18 and 26 being the independent claims. Claims 24-25 and 27 were previously cancelled. Claim 18 is sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 102

On page three of the Office Action, claims 18, 22, 23, 26, 31, and 32 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application No. 6,943,941 to Flagello *et al.* ("Flagello"). Applicants respectfully traverse the rejection and request that it be withdrawn.

Differences exist between amended claim 18 and Flagello. As amended, claim 18 recites, in part, "the parallel wire elements of each group are non-interlaced." In contrast, the wire elements of polarizer 20 of Flagello are interlaced. *See* Flagello, FIG. 2B.

Accordingly, claim 18 is patentable over Flagello for at least the reasons provided above. Claims 22, 23, 31, and 32 depend from claim 18 and are thus patentable over Flagello for at least the reasons provided above, and further view of their own features.

Differences exist between Flagello and claim 26. Specifically, Flagello does not teach "an array of elements patterned on the substrate that polarize UV light and produce radially polarized light." FIG. 4 of Flagello shows "the preferential polarization direction and the output from a TE polarizer according to the embodiments shown in FIGS. 2A and 3," which at examination shows a tangential polarization direction.

Accordingly, claim 26 is patentable over Flagello for at least the reasons provided above.

Further, Applicants note that Flagello cannot preclude patentability of claims 1 and 26 under section 103 because Flagello and the claimed invention are subject to an obligation of assignment to a same entity, ASML Holding N.V, at the time the claimed invention was made. *See* 35 U.S.C. § 103 (c)(1).

Rejections under 35 U.S.C. § 103

On page four of the Office Action, claims 18-23, 26, and 28-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0176166 to Shuster ("Shuster") in view of U.S. Patent Publication No. 2002/0167727 to Hansen *et al.* ("Hansen"), and in further view of Russian Patent Publication No. 2,166,819 to Niz'yev ("Niz'yev"). Applicants respectfully traverse the rejection and request that it be withdrawn.

Applicant submits that the Office Action reliance on Niz'yev is improper because it is a non-analogous reference. According to section 2141.01(a) of Manual of Patent Examining Procedure (MPEP), "[i]n order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's

endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." M.P.E.P. § 2141.01(a) (citing *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992)).

Niz'yev relates to a laser resonator used as a metal welding and cutting tool. Niz'yev, at p. 2-3. Niz'yev explained that "radiation polarization greatly affects laser treatment parameters of metals." *Id.* According to Niz'yev, "random, uncontrolled polarization situation leads to great instability of parameters and treatment quality," meaning, the cutting/welding quality of the laser will be poor. *Id.* Thus, Niz'yev relates to the field of laser cutting and welding and does not relate to Applicants' field of endeavor, "lithography," as recited in the preamble of claims 18 and 26.

Further, Niz'yev does not relate to the particular problem with which claim 1 or claim 18 is concerned. Niz'yev is concerned with enhancing the P-wave absorption of a cutting laser, a non-imaging tool, for "intense disintegration of [a] material." *Id.* at p. 13. As explained in Niz'yev, high P-wave absorption causes the laser "beam [to] penetrate[] more deeply into the material." *Id.* at p. 13. Whereas, claims 18 and 26 are concerned with enhancing the contrast of an imaging system using polarized light to form a coherent image on a surface.

Thus, Niz'yev is a non-analogous reference because the problem to be solved in Niz'yev and claim 18 and 26 is different. Niz'yev involves a non-imaging problem, while claims 18 and 26 involve an imaging problem. Moreover, there is no teaching, motivation or suggestion to combine Niz'yev with Shuster and Hansen.

Accordingly, Claims 18 and 26 are patentable over Shuster, Hansen, and Niz'yev, considered alone or in combination, for at least the reasons provided above. Claims 19-

23 and 28-32 depend from claim 18, thus they are patentable over Shuster, Hansen, and Niz'yev, considered alone or in combination, for at least the above reasons. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claims 18-23, 26, and 28-32.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Donald J. Featherstone
Attorney for Applicants
Registration No. 33,876

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1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600
DJF/YAT/